

**CHAPTER 37****RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN – ANNUITY AMOUNTS****3701 GENERAL**

370101. An annuity payable under the RSFPP is not assignable or subject to execution, levy, attachment, or garnishment-except for child support or alimony or to collect a debt caused by an overpayment described in Chapter 38, paragraph 3801. A debt to the United States or its instrumentalities incurred by the annuitant may be offset from the annuity. The annuity may be paid to a trustee in bankruptcy pursuant to the order of a bankruptcy court in a proceeding under Chapter 13 of the Bankruptcy Code, 11 U.S.C. (reference (dg)), since such proceeding is voluntary.

370102. Annuities payable are in addition to any pension or other payment to which the beneficiaries may now or later be entitled by law, and may not be considered as income under any law administered by the Department of Veterans Affairs except when the annuitant is entitled to DIC as a parent of a veteran.

370103. See Table 37-1 for general provisions affecting annuity payments.

370104. For settlement of arrears of annuities, see Chapter 31.

**3702 EFFECTIVE DATE OF ANNUITY**

370201. Each annuity payable normally accrues as of the first day of the month in which the member dies. If the Secretary concerned makes a determination that a participating member is presumed dead, the annuity accrues from the first day of the month in which retired or retainer pay was suspended on the basis of the member's missing status. When a member elects coverage for spouse and children (Option 3), an annuity is payable to eligible children on the first day of the month in which the widow or widower becomes an ineligible annuitant. For the child who is at least age 18 and attending a recognized educational institution (see Chapter 35, subparagraph 350102.C), the annuity accrues:

A. As of the first day of the month in which the retired member dies, if the eligible child's 18th birthday occurs in the same or a preceding month.

B. As of the first day of the month in which the child's 18th birthday occurs if the retired member died in the preceding month.

C. As of the first day of the month in which the child becomes or again becomes eligible if that child's 18th birthday and the retired member's death occurred in a preceding month or months.

370202. The first payment of the annuity cannot be made until a completed application is received. If a properly completed application is received, first payment must be made

not later than the 15th of the month after the month in which the retired member dies, nor later than the 15th of the month after the month in which the Secretary concerned has made a determination that the member is presumed dead. Payments are made in equal monthly installments thereafter as long as entitlement exists.

370203. No annuity accrues or is paid for the month in which all annuitants lose eligibility.

370204. If a member retires and dies during the same month, the annuity is payable for the full month.

### 3703 ANNUITY PAYMENTS

Upon official notification of death or Secretarial determination that a participating member is presumed dead, annuity accounts are established in accordance with the provisions of the election made by or on behalf of the member. A completed DD Form 768 (Application for Annuity Under RSFPP) validates the annuity account. Payment of annuity is barred when the member is retired for disability before completing 19 years of service (18 years of service before October 1968) if beneficiaries are eligible for VA Dependency and Indemnity Compensation. For payments for a representative payee of an annuitant, see Chapter 46, subparagraph 460103.C.

### 3704 CLAIMS FOR ANNUITY

The claim for annuity payments must be properly completed and signed by the person or persons authorized to receive annuity.

370401. An individual holding a valid power of attorney may complete (including the signature element) and file the annuity application form on behalf of an annuitant provided payments are to be made directly to the annuitant and provided further that the annuitant has not been determined to be incompetent of managing his or her own affairs by a state court, physician or psychologist. (See Chapter 46, paragraph 460103) An annuitant whose application is signed with an "X" must be witnessed (two disinterested persons) or notarized or countersigned by the person holding power of attorney. A copy of the power of attorney and explanation why the annuitant required assistance must be submitted with the annuity application.

370402. A claim signed by a legal representative must be accompanied by a copy of the court order of appointment.

370403. A claim signed by the custodian of a minor child or children must be accompanied by a document evidencing custodianship.

370404. A doubtful claim must be submitted to the United States General Accounting Office (GAO) for certification before payment.

370405. When a claim is not received within 6 years, the case is closed. If a claim is received later, the case is reopened.

### 3705 ANNUITY AMOUNTS

#### 370501. Single Option

A. Retirement before Nov 1, 1968. The monthly annuity payable, as elected by the retiree, is one-eighth, one-quarter, or one-half of the retiree's reduced retired pay as computed on the date of retirement or effective date of election, whichever is later.

B. Retirements from Nov 1, 1968 through Sep 20, 1972. The monthly annuity payable as elected by the retiree is:

1. One-eighth, one-quarter, or one-half of the retiree's gross retired pay on date of retirement; or
2. A specific dollar amount of not more than 50 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than \$25.

#### 370502. Multiple Options

A. Retirements before Nov 1, 1968. The monthly annuity payable for each option, as elected by the retiree, is one-eighth or one-quarter of the retiree's total reduced retired pay as computed on the date of retirement or effective date of election, whichever is later. The combined amount of annuities cannot exceed 50 percent of the retiree's total reduced retired pay.

B. Retirements from Nov 1, 1968 through Sep 20, 1972. The monthly annuity payable for each option, as elected by the retiree, is:

1. One-eighth or one-quarter of the retiree's gross retired pay on date of retirement; or
2. A specific dollar amount of not more than 25 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than \$25.

370503. Public Law 98-94 (reference (aj)). This statute provides that all monthly annuities to which a survivor becomes entitled on or after Oct 1, 1983, if not a multiple of \$1, are rounded to the next lower multiple of \$1. Annuities to which survivors were entitled on Sep 30, 1983, were not rounded until there was an adjustment made in accordance with 10 U.S.C. 1401a (reference (c)); then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of \$1, is rounded to the next lower multiple of \$1. All subsequent adjustments are based on the rounded amount.

3706 PAYMENTS TO WIDOW OR WIDOWER

For unique conditions affecting entitlement of annuity payments to widow or widower, see Table 37-2 for decisions of the Comptroller General.

3707 PAYMENT TO CHILDREN

370701. Annuities for a minor child or children are paid to the legal guardian, or if there is no legal guardian, to the natural parent who has care, custody, and control of the child or children as the custodian, or to a representative payee of the child or children.

370702. Annuities may be paid direct to the child when the law governing the state of residence stipulates the child to be majority age. The child then is considered an adult for annuity payment purposes, and a custodian or legal fiduciary is not required. See Appendix H for age of majority.

370703. The annuity is payable in equal shares to or in behalf of all eligible children. The annuity entitlement terminates when the youngest child becomes an ineligible annuitant.

370704. For unique conditions affecting entitlement and payment of annuities for a child or children, see Table 37-3 for decisions of the Comptroller General.

3708 COST-OF-LIVING ADJUSTMENT

370801. Annuities payable on Sep 30, 1978, to a spouse or child of a member who died on or before Mar 20, 1974, were increased by 66.1 percent effective Oct 1, 1978. The 66.1 percent increase was the percentage change in retired and retainer pay authorized by 10 U.S.C. 1401a (reference (c)) from Sep 21, 1972 to Sep 30, 1978.

370802. Whenever retired pay is increased through a cost-of-living adjustment, each annuity payable on the day before the effective date of that increase to a spouse or child or a member who dies on or before Mar 20, 1974, are increased at the same time by the same percentage. Beginning Oct 1, 1983, after each cost-of-living adjustment the annuity as adjusted, if not a multiple of \$1, is rounded to the next lower multiple of \$1. All subsequent adjustments are based on the rounded amount.

<b>COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, GENERAL</b>	
<b>Decision Number</b>	<b>Synopsis</b>
1. 35 Comp Gen 12 41 Comp Gen 500	Unpaid Cost for Coverage. Any unpaid RSFPP cost at time of a retiree's death, including nonpayment of direct remittance or erroneous computation of cost, must be collected before payment of any annuities.
2. 34 Comp Gen 664	Retired Pay Status Relinquished. Personnel who relinquish retired status (either voluntarily or involuntarily) are not permitted to pay RSFPP costs to entitle beneficiaries to annuities.
3. 43 Comp Gen 125	Effective Date of Payment. Annuity payments are paid under provisions of the RSFPP law as amended effective Oct 4, 1961, even though the election was made on Oct 4, 1961, before the hour in which the President signed the bill which amended the law.
4. 34 Comp Gen 151 38 Comp Gen 146	Annuity Payment Adjustments. Annuity payments must be adjusted on the basis of proper retired pay at the time the election became effective as though the member had actually been receiving such pay at that time. This applies to elections by members who elected while in a "saved pay" status, who later elected and received pay under the Career Compensation Act (CCA) retroactive to Oct 1, 1949.
5. MS Comp Gen B-156862, Jun 30, 1965	Failure to Submit Valid Election Form. After a member's death a copy of the RSFPP election is found in his personal effects. If it is not attested or notarized, and neither the original nor duplicate is located, it cannot be established that the member made an election. On the basis of information available, no annuity is payable.
6. 43 Comp Gen 418	Allocations of Annuity. The allocation of annuity payable under option 3 between the present spouse and the children of a former marriage applies to elections made before and after the Oct 4, 1961 RSFPP amendment. Public Law 90-485, Aug 13, 1968.
7. MS Comp Gen B-139217, Jun 29, 1959, Aug 12, 1960	Withholding Annuity to Satisfy Members Indebtedness. Annuity payments may be withheld to satisfy the member's indebtedness for overpayment of retired pay since the annuitant is under no obligation to the United States. However, the annuitant may voluntarily agree to repay the indebtedness by withholding from the annuity.
8. 39 Comp Gen 481 MS Comp Gen B-141131, Dec 30, 1959	Valid Intent of Member to Elect Spouse and Child Coverage. Both the spouse and children are covered when it can be established that the member intended to cover the children listed on the election certificate even though the election was checked to show spouse only.
9. 65 Comp Gen 621	Annuity payments should not be made payable to an agent acting under power of attorney when the annuitant is mentally incompetent even if a state statute had preserved the validity of a power of attorney executed before the annuitant was declared to be incompetent.
10. 66 Comp Gen 340	In the absence of a determination of incompetence made by a state court, physician, or psychologist that an annuitant is incapable of managing his or her own affairs, payments may be made directly to the annuitant. An individual, in accordance with a valid power of attorney, may assist the annuitant in completing and filing the annuity application form. (65 Comp Gen 621, clarified).

**Table 37-1. Comptroller General Decisions - Annuity Payments, General**

<b>COMPTROLLER GENERAL DECISIONS – ANNUITY PAYMENTS, WIDOW OR WIDOWER</b>	
<b>Decision Number</b>	<b>Synopsis</b>
1. MS Comp Gen B-158906, Jun 7, 1966	Validity of Annuitant's Marriage to the Member. Evidence must be of record to establish that a former marriage was legally ended. No annuity payments are authorized to be paid until legal proceedings are instituted to determine the validity of the marriage.
2. 44 Comp Gen 480	Foreign Divorce. The State of New York does not recognize a foreign divorce unless both parties appear personally or through authorized counsel in the country where the foreign divorce is obtained.
3. 43 Comp Gen 567	Foreign Divorce. A member's marriage to a woman who had previously obtained an illegal foreign divorce is not valid for annuity payment purposes.
4. MS Comp Gen B-154387, Jul 16, 1964	Interlocutory Decree of Divorce. An interlocutory decree does not end a marriage. A foreign divorce in the interim period is not valid. The final divorce decree terminates the marriage.
5. 42 Comp Gen 112	Divorce and Later Remarriage to Same Spouse. A spouse who divorces the member after retirement terminates eligibility for annuity. A later remarriage of the same people to each other does not reinstate eligibility to the annuity, even though deductions from pay are continued under terms of the member's election.
6. 38 Comp Gen 208	Annuity Elections at Time of Correction of Records. A member is regarded as having been in a retired status on Nov 1, 1953, effective date of the RSFPP law, if after that date a Correction of Records retired the member retroactive to a date before Nov 1, 1953. A spouse whom the member married after Nov 1, 1953 is not entitled to annuity since he or she was not the spouse on Nov 1, 1953.

**Table 37-2. Comptroller General Decisions - Annuity Payments, Widow or Widower**

<b>COMPTROLLER GENERAL DECISIONS – ANNUITY PAYMENTS, CHILD OR CHILDREN</b>	
<b>Decision Number</b>	<b>Synopsis</b>
1. 47 Comp Gen 270	Custodianship of Minor Child. Payment of RSFPP annuity may be made to a natural parent having care and custody of minor child or children, without the appointment of a legal guardian, even though such payments might eventually exceed the sum of \$1,000.
2. 35 Comp Gen 521	Custodianship of Minor Children. Payment can also be made to an adopting parent, as custodian of minor child since all rights and duties were acquired with the adoption.
3. 47 Comp Gen 371	Child Physically Incapacitated. A chiropractor's statement attesting to a child's physical incapacity is sufficient to substantiate eligibility as a beneficiary under RSFPP.
4. 48 Comp Gen 167	Ineligible Child. Child born May 1, 1950, became eligible for annuity benefits on May 1, 1968. Payment for month of April 1968 is proper.
5. MS Comp Gen B-160876, Apr 18, 1967	Incapacitated Child. An incapacitated child does not have to meet that condition as of member's retirement date of Nov 1, 1953, if later (as required by DoDD #1332.17, section 102c) to qualify as an eligible RSFPP beneficiary. Also, proof of continued incapacitation of a child annuitant is required at least every 2 years after age 18.
6. MS Comp Gen B-158411, Mar 10, 1966	Mentally Incapacitated Child. Mentally incapacitated child who married and whose marriage was annulled is considered unmarried and an eligible contingent beneficiary.
7. 44 Comp Gen 280	Unmarried Child. The term "unmarried child" is defined as not having a husband or wife at time of member's retirement, and without regard to the fact that the child may have been previously married.
8. MS Comp Gen B-131677, Jun 3, 1957	Legitimate Child. Children born from illegal marriage (one spouse not legally divorced from prior marriage) may be considered legitimate children for RSFPP annuity payments.
9. MS Comp Gen B-132012, Jun 17, 1957	Clarification of Election Fraction. A member who elected option 2 with both 1/2 and 1/8 factors checked, who failed to clarify the fraction desired, and who later stated a wish not to participate in the plan, must be assumed to have elected the minimum of 1/8 rate.
10. 36 Comp Gen 325	Adoption of Child. Child of deceased retired member receiving annuity under option 2 who is adopted after death of a retired member, is entitled to continue receiving the annuity. An adoption before death of retired member, or divorce from wife in which member elected option covering stepchild constitutes basis for terminating reduction of retired pay if option 4 included, and likewise voids entitlement to annuity upon later death of retiree.
11. 35 Comp Gen 521	Amendatory Birth Certificate. Amendatory birth certificate along with statement on election form is normally sufficient to substantiate date of birth and claimed relationship of adopted child.
12. 62 Comp Gen 193	Incapacitated Annuitant. Annuity payable to an incapacitated annuitant may not be suspended unless annuitant is capable of earning amounts sufficient for own particular personal needs through substantial and sustainable gainful employment. Advance written notice will be made prior to suspension and annuitant shall be given the opportunity to submit rebutting evidence.
13. 62 Comp Gen 302	Incapacitated Annuitant – Reinstatement of Annuity - Payment to Third Parties. An annuity may be reinstated upon the recurrence of original disabling condition. Annuity payments to incapacitated adult can be made to third parties only if appointed as guardian by court or under valid power of attorney. Power of attorney executed by mentally incapacitated annuitant may be invalid, even in absence of formal adjudication of incompetence. If annuitant suffering from mental illness has not been adjudged incompetent, and is considered by psychiatrist to be competent to manage annuity properly for personal maintenance, annuity may be paid directly to annuitant. If annuity cannot be paid directly to annuitant or properly paid to third party, annuity should accrue to annuitant's account until annuitant recovers or until guardian is appointed by court.

**Table 37-3. Comptroller General Decisions - Annuity Payments, Child or Children**